No. 1076 125

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NATIONAL LABOR RELATIONS BOARD,

~~*Petitioner*~~ *Respondent*,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,

~~*Respondent*~~ *Appellant*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ARCHIBALD PALMER,
Counsel to Respondent-Appellant.

THE COURT PRESS, N. Y. C.

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IN THE

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OCTOBER TERM, 1943.

NATIONAL LABOR RELATIONS BOARD,

Petitioner-Respondent,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,

Respondent-Appellant.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

To the Honorable the Chief Justice and Associate Justices for the Supreme Court of the United States:

The petition of The Century Oxford Manufacturing Corporation respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF MATTER INVOLVED.

This is a petition for a writ of certiorari by The Century Oxford Manufacturing Corporation to review a decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above cause on March 3, 1944 enforcing the order of the National Labor Relations Board (R. 1004-1006).

Statement of Facts.

The Century Oxford Manufacturing Corporation is engaged in the manufacture, sale and distribution of optical frames and mountings and related products, with a principal place of business in Long Island City, New York, and has one hundred and ten employees.

The Wholesale & Warehouse Workers Union, Local 65, C. I. O., commenced organization activities among the employees sometime in the middle of June, 1941 (R. 367). Thereafter and on November 19, 1941 the said union, by a vote of sixty to nineteen, in a consent election, was certified as the sole bargaining representative under Proceedings 9 (c) of the Act (R. 898). Pursuant to a request to bargain The Century Oxford Manufacturing Corporation's representative met with the union's representatives on December 5, 8, and 16, 1941 (R. 370, 374, 375). At these bargaining conferences The Century Oxford Manufacturing Corporation and the union did not come to terms.

On December 31, 1941 a shop committee of employees was organized for the purpose of withdrawing from the union. A total of seventy-nine of the employees signed a petition stating that they did not want the union to represent them in collective bargaining (Respondent's Exhibit 3, R. 902). This group of employees held at least two meetings and elected a committee to represent it (R. 612).

On January 26, 1942 the employees, numbering seventy-nine, petitioned the Board for an investigation and certification, pursuant to Section 9 (c) of the Act (R. 888). On the 7th day of August, 1942 the Board dismissed the said employees' petition (R. 891).

In advance of the trial and in substantiation of its affirmative defense as alleged, The Century Oxford Manu-

facturing Corporation offered to stipulate a consent election as late as June, 1942 in its desire to effectuate the policy of the Act and to prove to the Board that the union involved no longer represented a majority of the employees (R. 58). This offer was refused.

Hearings were held before the National Labor Relations Board and findings of fact, decision and order were issued by the Board on February 22, 1943, directing that The Century Oxford Manufacturing Corporation and its officers, agents, successors and assigns shall cease and desist from refusing to bargain collectively with the union as exclusive representative of its employees; from dominating and interfering with the formation or administration of the committee representing workers of The Century Oxford Manufacturing Corporation; from contributing support to it or recognizing the said committee as the representative of its employees; and to take affirmative action which the Board found will effectuate the policies of the Act such as, upon request, to bargain collectively with Wholesale and Warehouse Workers Union, Local 65, C. I. O., as the exclusive bargaining representative of the employees of The Century Oxford Manufacturing Corporation; to withdraw all recognition from and completely disestablish the committee representing workers of The Century Oxford Manufacturing Corporation, etc. (R. 1004 to 1006, incl.).

The National Labor Relations Board filed a petition for an order enforcing its cease and desist order against The Century Oxford Manufacturing Corporation with the Circuit Court of Appeals for the Second Circuit. The Circuit Court of Appeals, in a *per curiam* decision, granted the petition for an order enforcing the cease and desist order of the National Labor Relations Board (R. 1021 to 1024, incl.).

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the United States Circuit Court of Appeals for the Second Circuit will result in a denial of due process of law and therefore violates a constitutional right of The Century Oxford Manufacturing Corporation.

2. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act to give employees freedom to choose a local organization, whether such choice by the employees be wise or not.

3. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act which does not create a minimum time during which their elected representative may act on their behalf.

4. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the decision of *Donnelly Garment Company* v. *National Labor Relations Board*, decided by the United States Circuit Court of Appeals for the Eighth Circuit and reported in 123 Fed. (2d) 215.

5. The decision of the United States Circuit Court of Appeals for the Second Circuit involved the interpretation of a Federal statute which is of paramount importance to business and labor throughout the country.

6. The United States Circuit Court of Appeals has

decided a question of Federal law of vital importance which should be settled by this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court for the Second Circuit commanding that it certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case; and that said decree of the United States Circuit Court for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem mete and just, for which your petitioner will ever pray.

Dated, New York, June 1, 1944.

THE CENTURY OXFORD MANUFACTURING CORPORATION,

By: Archibald Palmer,
Counsel for Respondent-Appellant.